



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 28, 1998

Ms. Monica L. Strickland
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR98-1326

Dear Ms. Strickland:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115349.

The City of Midland (the "city") received a request for a copy of the 911 service call made from a particular location at a certain time. You claim that the caller's identity is excepted from disclosure under the informer's privilege and the Family Code section 261.201. We have considered your arguments and reviewed the submitted information.

The informer's privilege is incorporated into section 552.101 of the Government Code, which excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Texas courts long have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2

(citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5. Where statements evidence no wrongdoing or violation of law, they are not protected by the informer's privilege. Open Records Decision No. 549 (1990); see also Open Records Decision No. 515 (1988) (where letters do not describe conduct which is clearly criminal, they are not excepted by the informer's privilege).

Additionally, we note that the privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 (1990). However, the exception is inapplicable if the identity of the informer is known to the subject of the communication. Open Records Decision No. 202 (1978) at 2

Upon review of the requested information, it is apparent that the identity of the caller is known to the subject of the communication. Thus, the identity of the caller may not be withheld from disclosure under the informer's privilege in conjunction with section 552.101 of the Government Code.

Next we observe that section 552.101 of the Government Code excepts information from required public disclosure when the information is confidential by law. Subsection (a) of section 261.201 of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

We have reviewed this information, which consists of a 911 tape that does not have any information which indicates to this office that it concerns "reports, records, communications, and working papers used or developed" in an investigation made under chapter 261 of the Family Code. As chapter 261 of the Family Code is not applicable, you must release the tape to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a faint horizontal line.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 115349

Enclosures: Submitted documents

cc: Mr. Royce E. Hoskins
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P.O. Box 1995
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(w/o enclosures)